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Note: This chapter does not purport to substitute for legal advice. The requirements for bidding in New Jersey are outlined in (N.J.S.A. 40A:11-1 et seq.). Anyone preparing a bid document should carefully review these statutory requirements with a lawyer. This chapter will acquaint recycling coordinators with some key provisions of the statute that are often overlooked when bid documents are prepared.

Smart contracting

In-house or outsource? That's a cost question many program managers ask. Should you use your own staff and equipment to collect recyclables or should you contract for those services? If you choose to outsource collection, you should master the practical and legal requirements of the bidding process. Both the language of the contract and the bid process itself must be clear and specific to minimize misunderstandings that can cause delays, increase costs and invite legal challenges.

For municipalities contracting for recycling collection, your legal guide is the Local Public Contracts Law (N.J.S.A. 40A -11.1 et seq.). And if recycling collection is coupled with a solid waste collection contract, bid specifications must also conform with (N.J.A.C. 7:26H - 6.1 et seq.); the Uniform Bid Specifications for Solid Waste Collection.

Thus, if you go the outsourcing route for collection, you have two important responsibilities:

1. developing bid specifications
2. writing a contract that is fair to both parties

Legal requirements are different for marketing recyclables, but a similar question arises. Do you sell your materials yourself, or contract with a private company? When selling recyclables, coordinators are not legally required to go out for public bid, and can negotiate directly with a buyer. Public bidding is required, however, if marketing is combined with collection service. And if you choose to solicit public bids to sell recyclables, the process must meet the requirements of the Local Public Contracts law, as explained in *Who has to bid what?*

Who has to bid what?

The following guidelines can help public sector recycling coordinators determine which projects must follow the requirements of the Local Public Contracts Law; (N.J.S.A. 40A-11.1 et seq.), or The Uniform Solid Waste Collection Bid Specifications; (N.J.A.C 7:26H-6.1 et seq.), or both.

- If you are bidding for recycling collection *and* marketing, the bid must conform to the requirements of the Local Public Contracts Law.
- If you contract only to *sell* recyclables, you may negotiate directly with a buyer, and don't need to go out to bid.
- If you choose to publicly solicit bids for buyers of recyclables, you must follow the requirements of the Local Public Contracts Law.
- If you are bidding for recycling collection *and* garbage collection combined, you must follow the requirements of the Local Public Contracts Law and the Uniform Solid Waste Collection Bid Specifications.



Definitions

A bid is defined in Barron’s Law Dictionary as “...an offer ...to buy goods or services at a stated price...” It is the promises made by a service provider that wants to perform work for another party. First, you define the promises in the bid, then you clearly state them in the contract. Contract disputes often arise because two parties have different understandings of the promises upon which they base their assumptions.

Barron’s defines a contract as “a promise, or set of promises, for breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.” Contracts for collection and marketing of recyclables are often referred to as “bilateral contracts,” which Barron’s defines as contracts “in which there are mutual promises between two parties to the contract, each party being both a promiser and a promisee.”¹

In practical language, a contract is the written terms of a promise, and it helps ensure that both parties keep to their bargain. A good contract must go further, advises attorney Joseph Maraziti, Jr. “A good contract is one where most of the terms are self-enforced. When one party has a question, that party can go to the contract and review the terms. The paper often ends the disagreement since the parties can see the terms, and thus, the confusion is cleared up immediately.”²

From bid to contract

In addition to meeting the legal requirements of the Local Public Contracts Law, all contracts should contain two practical elements:

1. service parameters
2. protective measures

Service parameters

Service parameters define the scope of work expected from the contractor. They also provide standards to measure a contractor’s performance. Because bid specifications usually become part of the final contract, service parameters are the heart of your bid.

You can help develop accurate service parameters by giving bidders complete and accurate data about your community and your solid waste management program. The time you invest in data collection can save you money in the contract price because it reduces guesswork by the bidders. When bidders are forced to guess, they often estimate costs on the high side to ensure they can service your contract profitably. By providing complete information on the questions below, you’ll reduce those margins of error.

Material to be collected

Here’s an area where bidders often complain about incomplete information. Exactly which materials and which specifications of materials will you collect? What grades of paper, for example? Which kinds of plastics? Include current and projected tonnages of each material, including historical trends, program growth and any other information to help bidders better understand how much material your program will generate. At a minimum, try to include five years of tonnage information and be sure to note any program changes that might affect tonnage.

The Uniform Solid Waste Collection Bid Specifications provide a good working model of a data sheet, but you should tailor your sheet to your program.³

Be as specific as possible for each material. For example, will you collect number 6 news or some other grade? Other materials might include aseptic packaging, plastic film, chip board, textiles or other recyclables. If yard waste is included, be specific about the materials to be collected and any changes in frequency of collection during the year. If you include all paper as a single stream or if you collect all containers as commingled material, note that in the description section of the bid document.

Community demographics

The demographics of a community tell your bidders how many customers, and what kinds of customers, they can expect to serve during the life of the contract. Include current and projected numbers of households and a demographic breakdown of the community. For example, if the bid requires collection from multi-family, retail businesses, office buildings, schools, non-profits, or municipal facilities, provide current and projected totals for the number of units and tonnage for each category. The *Municipal demographic information data sheet* provides a sample.

Provide as much detail as possible. If a new apartment complex will open next year or a major subdivision will be completed, include that information in this section.

Municipal collection information data sheet

Tonnage reports:	Year _____	Year _____
Material recycled:	(Tons)	(Tons)
<i>Glass</i>		
Amber	_____	_____
Green	_____	_____
Brown	_____	_____
<i>Aluminum</i>		
Used beverage containers	_____	_____
Scrap foil	_____	_____
<i>Steel cans</i>		
<i>Plastic containers</i>		
PETE	_____	

HDPE	_____	_____
<i>Newspaper (grade)</i>	_____	_____
<i>Corrugated cardboard</i>	_____	_____
<i>Other paper</i>	_____	_____



Municipal demographic information data sheet



	Current year	Projected
<i>Residential sources</i>		
Single family	_____	_____
Multi-family(up to four family)	_____	_____
Apartments/condominiums	_____	_____
Other	_____	_____
<i>Commercial sources (by type)</i>		
Office building	_____	_____
Retail	_____	_____
Restaurant/bar	_____	_____
Supermarket	_____	_____
Convenience store/deli	_____	_____
Institutional sources	_____	_____
Schools	_____	_____
Hospitals	_____	_____
Houses of worship	_____	_____
Municipal sources	_____	_____
Municipal buildings	_____	_____
Libraries	_____	_____
Municipal depots*	_____	_____
Parks	_____	_____

* This includes collection at any recycling depots the municipality may operate.

Development trends

New housing units in the past 5 years	()
New housing units approved for the next year	()
New housing units projected over the life of the contract	()
New retail or commercial units or square footage next year	()



Roads

Provide the latest road map with the bid specifications. If you have established collection zones, include them on the map as well. Be sure to highlight any important constraints, such as one-way streets, narrow or restricted roads, low bridges, weight limits and other traffic or road conditions that might affect collection efficiency.

Collection parameters

Consider the exact level of service you want. But be mindful of what you ask for, because you can expect your bill to increase as your requirements increase.

To avoid “sticker shock,” begin planning the bid **at least six months** before you expect to put the specifications out for consideration. Allot even more time if you’re going to bid a service for the first time, or if you’re making substantive changes to your existing program. Six months lead time gives you a number of advantages.

Begin planning bids at least six months before you expect to put specs out for consideration



1. You have time to review your existing service parameters and determine whether you need to provide the same level of service in the future.
2. You have time to prepare an in-house estimate of the service you’re requesting. This is a valuable, but often ignored, exercise. An in-house estimate can support the recommendations you make to community decision makers. It also gives you a benchmark to use if you decide to reject all bids because their prices are too high.
3. Ample lead time for you helps provide sufficient lead time for the successful bidder. A new contractor has enough start-up time to serve your community. Contractors need time to secure equipment and labor, survey routes and coordinate with municipal staff collections. Aim to give the contractor a minimum of 30 days from the date of award to start up.
4. You have time to re-bid if necessary. If you reject all bids, you want to re-bid while you’re still operating under an existing contract. If you need to award an emergency contract extension, your negotiating position could be painfully weak, and you could be forced to accept whatever charges your current contractor imposes. (The contractor’s costs may in fact be higher if his or her trucks and personnel are committed to other projects, which is common if the contractor does not participate in, or expect to win, the new bid process.)

Collection specifics

This section outlines the scope of work and level of service contractors will provide. For example:

The Contractor shall provide recycling collection services for all residential units within the municipality on a one (1) time per week basis.

The Contractor shall provide recycling collection services at all houses of worship and small commercial businesses as noted.



These two, brief sentences contain some critical terms. First, the term “shall” has a specific meaning in contracts. “Shall” is an absolute term. It allows no debate about the scope of the work to be provided. In contrast, the term “may” is permissive rather than absolute. Also, note that the number one is both written out and repeated as a number in parentheses. This redundant format helps avoid confusion that can be caused by a typographical error.

The narrative should spell out specific service requirements. For example:

The Contractor shall provide recycling collection services at designated municipal facilities and public properties as indicated on the following pages and on the map on page xxx.

Be as specific as possible. If you require service at multiple locations, list each one. If you want municipal facilities collected on a different schedule than residential collections, state that clearly. The narrative also should be precise about miscellaneous locations, such as parks, roadside stops or bins on streets. Include the number of containers at each stop and any collection schedule requirements.

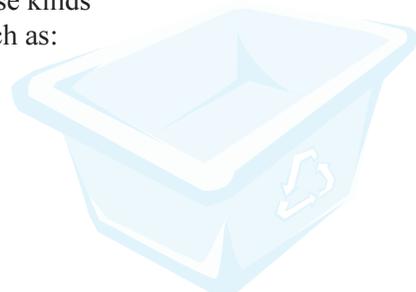
Avoid ambiguous language regarding the frequency of collection, such as *More frequent collections may be required*. Vague language makes it difficult for bidders to calculate an accurate cost, so they may be forced to guess high, which inflates your final price. This does not stop you from requiring more frequent collections; simply explain clearly what you require. For example, seasonal populations may dictate twice per week collection between May 15 and September 15 and once every two weeks in all other periods. Write those dates and frequencies in your narrative.

Containers

Who will provide the containers for the curbside collection program? What size, type and color will be provided? Do you require a specific logo? How many will you need and at what locations? What performance specifications (expected life, strength, weight, for example) will you require? What brands will you accept? These are not simply questions of style. If the contractor provides the containers, these are cost considerations, so your answers should be included in your bid document.

In some cases, the responsibility may be split between the contractor and the municipality. Municipalities often have recycling containers in stock for residential units, but they may lack larger containers, such as roll offs and dumpsters, for multi-family or commercial units. If you do require these kinds of containers, include specific language about safety requirements, such as:

All recycling compactor boxes, dumpsters and roll off containers shall conform to New Jersey Department of Environmental Protection and ANSI Z245.30, Safety Requirements for waste containers standards and shall be maintained in conformance with the provisions of N.J.A.C. 7:26 et. seq.



Be careful about what you require in addition to safety requirements. Requiring new containers at the start of the contract term will add to the cost of service. Requiring a specific type of container or requiring a painting schedule or even a specific color may add to the price as well. Simply be aware that each requirement can add to the bidder's cost of operation, and in turn to your cost of service.

Because recycling contracts are bilateral agreements, the municipality also must agree to provide safe access to the facilities and containers being serviced. For example:

The Contractor will be provided with safe and reasonable access to recycling containers. The Contractor is not required to render service if the presence of any interference prevents access to a recycling container and/or poses a threat to the Contractor's employees or agents. The Contractor shall collect all materials from containers as soon as possible, but no later than 24 hours after the problem that prevented the pick-up is rectified.

Collection schedules

Provide bidders with specific requirements for collection operations. This section should describe when the contractor may begin, or is required to begin, and when work must be completed. For example:

All collections as described in these specifications, shall be performed between the hours of 7:00 a.m. and 7:00 p.m. EST.

The times are up to you. However, you should note that if your recycling collection contract is not combined with solid waste collection, the successful bidder need not be a licensed public utility. If you award the contract to a non-regulated, non-public utility company, the contractor is subject to local noise ordinances. Therefore, consult those ordinances when you develop your specifications. Conversely, any company that collects solid waste in New Jersey must be licensed according to statutes of the Board of Public Utilities and the Department of Environmental Protection. If a company is regulated as a public utility, it is not subject to municipal noise ordinances. However, it is still subject to the terms of your contract, so you can write those noise restrictions into your specifications.

Also be sure to include when collections will be performed. Is it limited to Monday through Friday, or are weekends okay? Include your holiday schedule instructions for making up collections missed because of holidays. These are important cost considerations. Will you allow the contractor to skip the holiday collection and pick up on the next scheduled service day for that area? Or will you require the contractor to collect from those units on the day before or after the holiday? Expect prior-day or next-day pick up to cost more because you are essentially requiring twice the work in a single day. The contractor has to pick up the regularly scheduled customers plus the holiday workload. That usually means overtime bills, and it often requires extra equipment. Picking up extra materials on the next scheduled service day should be less expensive because you are requiring a lower level of service.





Ownership of material

Who owns the recyclables can affect what you pay to collect them. If you maintain ownership, your collection contract needs to include transportation to the markets you select. Your bid specifications should require transporting materials to potential markets or require a per-mile charge for transport.

You also can choose to relinquish ownership of the material. This will simplify the contract specifications, but also means giving up some control and all the potential value of the material recycled by your program. If you choose this option, you should still maintain some level of oversight about how the contractor markets your materials. No one wants headlines revealing that your recyclables are being landfilled! Consider inserting language that grants you approval power over marketing, such as:

The Contractor shall take ownership of all recyclables collected from the municipality and shall be responsible for the marketing of these materials. Disposition of these materials must be at an approved market or processing facility. An approved market or processing facility shall be determined by the municipality in consultation with the contractor. Approval shall not be unreasonably withheld.

Vehicle requirements

Safety, material protection and reasonable appearance are the critical issues involving recycling vehicles.

Safety can be covered with language that ties vehicle maintenance to statutory requirements for trucks of the type being used. For example:

All vehicles shall be maintained in conformance with the requirements of the New Jersey Department of Transportation and the New Jersey Department of Environmental Protection.

To protect the material being collected, consider requiring vehicles to be fully enclosed.

All recycling collection vehicles shall be completely enclosed and shall be designed so as to prevent spillage of the recyclable material that is collected.

To protect against contractors that use dirty or noisy equipment, consider adding the following language about maintenance requirements and customer complaints.

All vehicles shall be maintained in good working order and shall be constructed, operated and maintained so as to reduce unnecessary noise, spillage, and odor. The Municipality shall have the right to inspect the vehicles at any time during the term of this contract, and the Contractor shall comply with all reasonable requests relative to the maintenance and repair of said vehicles.*

The municipality may order any vehicle used in the performance of the contract out of service if the vehicle is not maintained in accordance with the requirements of these work specifications. In such event, the Contractor shall replace such vehicle, at its sole cost and expense, with a vehicle satisfactory to the Municipality.

* “Unnecessary noise should be related to local noise ordinances.

This language places a reasonable cost burden on bidders with poorly maintained or substandard equipment. Of course, these provisions must be administered reasonably; they are not designed as tools of punishment during disagreements with the contractor. The term “reasonable” is open to interpretation. In fact, that’s what courts often do. For the record, however, “unreasonable” is defined in Barron’s Law Dictionary as:

“arbitrary, capricious, absurd, immoderate, or exorbitant; not conformable to reason, irrational, beyond bounds of reason or moderation.”



Protective measures

A good contract must do more than state services to be performed. Its must also protect you from serious problems that may arise during the course of the contract. Protective measures also can be cost-savers if they prevent problems that otherwise might have occurred. However, each level of protection can add to the cost of the service. Your goal is to strike a balance between cost and protection. Consider the following protection items in developing your specifications.

Insurance requirements

The question of insurance is not whether to have it, but how much is enough. Setting the requirement too high can hurt you in two ways. First, requiring high levels of general liability insurance tends to limit the number of bidders. Small companies may have difficulty securing more than \$3 million in aggregate liability insurance, for example, and this could leave only larger organizations to bid on your work. Second, your costs rise as your insurance requirements rise simply because it costs more to get more.

So, how do you determine an insurance limit for a collection contract? Start by reviewing accident records of companies that have historically provided recycling or solid waste collection in your municipality. If collection has been done by a public agency, review the local accident history of the department that did the work. Ask the key question: has there ever been an accident that caused more than \$3 million in total general liability or \$1 million in individual liability? If not, you may reasonably decide not to require higher levels.

The Uniform Bid Specifications for Solid Waste Collection limit how much general liability insurance you may require for solid waste collection specifications. The uniform bid law also sets limits for automobile liability insurance (\$500,000 for each person and \$1 million per occurrence) and for



property damage (\$1 million per occurrence). Although these limits do not legally apply to contracts for collection of recyclables only, they can still serve as useful guidelines when you consider the risk history of your community.

Finally, consider the risks associated with worker’s compensation insurance. The state law prohibits limits on worker’s compensation in solid waste specifications. This is an important issue because solid waste and recycling collection have high rates of worker injuries compared to other occupations.

Indemnification

Regardless of your insurance protection, you and your organization always face the risk of being sued by contractors, residents or markets. An indemnification provision can help protect you in those cases. The following example has language that covers most contingencies.

The Contractor shall indemnify and hold harmless the municipality from and against all claims, damages, losses, and expenses including all reasonable expenses incurred by the municipality on any of the aforesaid claims that may result or arise directly or indirectly, from or by reason of the performance of the Contract or from any act or omission by the Contractor, its agent, servants, employees or any subcontractors and that results in any loss of life or property or in any injury or damage to persons or property.

Liquidated damages

Liquidated damages are a common source of contract disputes. To summarize the Barron’s Law Dictionary definition, liquidated damages are “a reasonable estimation of the damages” that are “likely to actually result from” a breach of contract. By stating these amounts in the contract, both parties agree to set a maximum limit on the estimated cost of those damages. Be clear on one important point: liquidated damages are not penalties. A penalty punishes a contractor for failing to perform duties as required by contract, and New Jersey courts do not recognize penalty provisions of contracts as enforceable. On the other hand, liquidated damages attempt to recover actual costs or economic harm caused by a contractor’s failure to perform contractual duties, and they are enforceable. Here’s an example of a liquidated damages provision:

If the contractor does not clean up spillage as required in these specifications, the work will be performed by municipal employees or a designated contractor. As a result, liquidated damages will be assessed against the Contractor in an amount equal to the cost of municipal clean up, but in no event shall the damages be less than \$100 per occurrence.

This is an assessment of damages incurred each time the contractor does not perform a specified function. The \$100 figure is a cost estimate of work performed, not a penalty for breach of contract. Similarly, you can include language for failure to complete collection, or for improperly disposing material because they cost your organization lost productivity, revenue or credibility. Missed collections can cause a flood of customer complaints or inquiries that



require staff attention, or they may require special pick-ups by your staff. Improper disposition may require investigation and enforcement time and personnel. The key is to estimate the economic damage associated with those activities.

Conversely, language stating that the contractor “shall pay \$1,000 to the township for each failed pick up” probably could not survive a legal test as liquidated damages. Using the term “payment” rather than “assessment of damages” is one indication that the amount may not be based on costs. If there is no clear explanation of the harm created by missed collection and if the \$1,000 amount is unrelated to the projected cost of that harm, the \$1,000 would probably be deemed a penalty, and therefore, unenforceable in court.

Violation of specifications

Liquidated damages cannot serve as a penalty, but contract writers have other tools to ensure that contractors perform work as promised. Consider including the following language, which establishes a severe potential and justifiable remedy for breach of contract.

Any violation of these specifications shall be sufficient cause for the immediate cancellation of the contract by the municipality, who may thereupon employ the necessary labor to perform the work or re-advertise or relet the work, at the expense of the offending Contractor and his sureties.

This is a serious step that should be reserved for major contract violations. Therefore, you should establish intermediate steps to be taken before claiming irrevocable violation of specifications. Complaints should be carefully documented.

Failure to collect and failure to perform

These provisions provide some of those intermediate steps to correct contractor performance that does not meet specifications. This language can cover most problems encountered during the performance of the contract. Here are two examples:

The Contractor shall report to the municipality within one (1) hour of the start of the collection day, all cases in which severe weather conditions preclude the collection of designated recyclable materials.

The Contractor shall promptly and properly attend to all complaints and all notices, directives and orders of the municipality within twenty-four (24) hours of receipt of the same. The contractor shall be required to maintain a log of all complaints received and the action taken to remedy the complaints. The municipality shall have the right to inspect the complaint log upon request.

You may also include language regarding property damage as well as meetings to discuss service or to resolve complaints.



Performance bonds

Performance bonds are your protection against the biggest failures. What if your contractor goes out of business or is simply unwilling or unable to service the contract? A performance bond guarantees that your program and organization will be protected financially even if you're forced to hire a new contractor to complete the service. According to attorney Joseph Maraziti, Jr., performance bonds come in three flavors:

- *Third Party Guarantee*
- *Performance Bond*
- *Letter of Credit*

Your strongest protection against contractor failure may be the care and research you invest in evaluating and selecting the successful bidder. Even with the most thorough research, it's still prudent to include one of these three kinds of a performance bond.

Third-Party Guarantee

This is normally used by the subsidiaries of larger companies, and the corporate parent guarantees the subsidiary's performance. It is the least costly of the three kinds of performance bonds because it simply requires a binding agreement between a subsidiary and its parent company. However, it also provides the lowest level of protection. A third-party guarantee assumes the parent company will be able to honor its promise and provide the services required in the contract.

Performance Bond

By far the most common form of protection used in contracts with public agencies, performance bonds cost more than third-party guarantees, but offer a higher level of protection. A performance bond is essentially an insurance policy that a contractor buys from an insurance company. The insurance company is putting its money "on the line" in case the contractor fails to perform, so it has a keen incentive, and financial obligation, to research the company applying for insurance. Firms with a history of defaults have trouble buying this kind of insurance, so this requirement essentially gives you the expertise of independent reviewers to help weed out unqualified bidders.

There are two potential downsides to performance bonds.

The first one, the bonding level you require, is avoidable. In most cases, it's a mistake to require a performance bond equal to the full value of the contract. A five-year, \$5 million contract, which costs \$1 million annually, does not require a \$5 million performance bond. Instead, it's far less costly to require a bond equal to the annual value of the contract. And big bond requirements aren't just more expensive: they also may prevent smaller firms from bidding on your project because larger bonds are harder to obtain.

The Uniform Bid Specifications for Solid Waste Collection allow public agencies to require a bond equal to the annual value of a contract. It must be a renewable bond reflecting the annual cost of the contract, and may not exceed the value of the contract. Although this law does not apply to recycling collection contracts, it's still a good cost containment strategy.

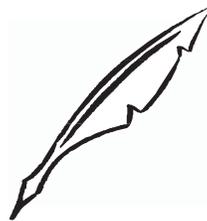
A similar, but more expensive, strategy is to allow use of a depreciating term bond. In the first year of a multi-year contract, these bonds insure the full value of the contract. Each year, the insured value of the bond declines to cover the services still to be delivered.

The second problem with performance bonds is more challenging to solve. Performance bonds can be difficult to collect. The insurance company's money is at risk, so it's no surprise they will only pay claims that are thoroughly documented and tenaciously pursued, according to attorney Joseph Maraziti, Jr.⁴

Letter of Credit

The letter of credit may be your highest level of protection in bid specifications, but it's so restrictive that it may intimidate many organizations from bidding on your work. A letter of credit acts more like a certified check than an insurance policy. It requires contractors to put their financial assets on the table as collateral against a failure to perform.

Remember, your goal is to develop an agreement that allows the contractor to do the job to your specifications with a minimum of interference, dispute and necessary expense. To achieve that goal, your up-front strategy is to write clear requirements into the bid specifications and to ensure the successful bidder has the ability to fix problems that may arise.



Legal considerations

For public agencies, the requirements for bidding in New Jersey are outlined in the Local Public Contracts Law.⁵ This manual cannot substitute for legal advice, and anyone preparing a bid document should carefully review these statutory requirements with a lawyer. The section will, however, highlight key provisions of the statute that are often overlooked in preparing bid documents for recycling.

Legal challenges to the bid process cost you in lost time and hard dollars. No surprise there. Bid awards are most often contested when a low bidder is not awarded a contract, or when unsuccessful bidders claim that the lowest bidder was not the lowest responsible bidder. That's the tricky legal question: what is the lowest responsible bidder and when is that different than the lowest bidder? The devil is in the details.

For solid waste collectors, a responsible bidder is specifically outlined in N.J.A.C. 7:26H-6.8, *lowest responsible bidder*. Once again, bids for recycling collection alone are not bound by these regulations, but they are useful guides. Specifically this section states that:

(a) The responsible bidder is one who at the time of the bid submission:

- 1. Conforms to all requirements of the bid specifications*
- 2. Has an approved uniform tariff on file with the Department*
- 3. Has experience in the type of work to be performed*
- 4. Has the equipment necessary to perform the work described in the bid specifications*
- 5. Has the financial ability to perform the work.*

(b) The governing body may reject an otherwise complete bid proposal when the bidder has a history of intentional noncompliance with mandatory terms and conditions of similar collection contracts with any contracting unit or has failed to fully perform a prior collection contract with the contracting unit.

Only condition 2 is not relevant to recycling collection contracts (no tariffs are required for recycling collection alone).

Price is not the sole determinant in awarding a contract. This language gives you some flexibility to protect against “lowball” bidders who may not be able to perform the work. Proceed with caution, though. You need tangible, documented reasons for not awarding the contract to the lowest bidder.

Correctable and non-correctable bid items

Mistakes happen. But not all mistakes are created equal. In the language of bids, they fall into two main classes: correctable and non-correctable errors. The easiest reason to reject a bid is non-conformance with a non-correctable defect in the bid submission.





A correctable error (often called a correctable defect) is typically considered a minor mistake in a bid submission, such as failing to write out a price quote in addition to printing a numeric quote in the document. The mistake is not material in the bid and can easily be corrected. Of course, the bidder can't change the number being submitted, but otherwise, this mistake is easy to correct.

On the other hand, if a bidder forgets to submit a price at all, that's a non-correctable error, a material defect, and you must disqualify the bid. Other examples of non-correctable errors include:

- failure to submit a bid bond
- failure to submit required documents as outlined in the bid specifications

N.J.A.C. 7:26H-6.5(a) includes a list of non-correctable defects, including failing to comply with the following requirements:

- a completed questionnaire
- a non-collusion affidavit
- a stockholder statement of ownership
- a consent of surety
- a bid proposal

If your recycling bid is combined with solid waste collection, failing to include a certificate of public convenience and necessity also would be a non-correctable defect.

Other reasons to reject a bid

A public agency also has the right to reject a bid if it fails to conform with the provisions of the public bidding laws of the state. Thus, you should work closely with a lawyer in developing bid specifications.

From a practical viewpoint, the reasons for rejection should be clearly spelled out. That's one advantage of using the Uniform Solid Waste Collection Bid Specifications. These specifications state much of what normally needs to be considered in a bid document in relatively clear and concise language.

Finally, if you have a good reason, you can reject all bids. If all of the prices submitted are higher than your projection, you can reject all bids based on price. That's why it is valuable to perform an in-house estimate before you go out to bid.

The bid process

Competition helps keep a lid on costs, so you want to attract a healthy pool of bidders. Give bidders plenty of time. New Jersey's general bidding statutes (N.J.S.A. 40A-11.22) require only 10 days from the day your legal ad for

recycling collections appears to the day bids are due, but 60 days is a better target. By giving bidders ample time for questions, clarifications, addenda and research, you should receive more and better quotes. You may want to consider the following six-month schedule.

- two months to write the specifications
- one month to handle pre-bid questions and addenda
- one month for award
- one month for contingency
- one month for the successful bidder to prepare



Advertising

The team that prepares the bid should include a purchasing agent, legal counsel and the recycling coordinator. The purchasing agent often prepares the advertisement for services, but the lawyer and recycling coordinator should review it to ensure the accuracy of services being requested.

Pre-bid conferences

A pre-bid conference is a meeting where anyone interested in submitting a bid can ask questions of the officials in charge of the bid. Subsequently, those officials issue a response document and any addenda required to clarify the bid document. A pre-bid conference can help eliminate costly confusion about bid specifications. When bidders are unsure about assumptions or specifications, they tend to overestimate costs to protect themselves. Pre-bid conferences also allow you to see potential bidders face-to-face, so you are no longer dealing with anonymous third parties.

The downside of pre-bid conferences? They create more work. Somebody needs to take accurate notes and prepare a response document and perhaps an addendum.

Addendum

An addendum is just what its name implies. Because it is an alteration of the original bid document, an addendum must be sent to all bidders and it must be advertised at least five days prior to the receipt of bids. This process allows you to correct errors, alter specifications problems, and otherwise improve the bid document before bids are received. This extra step can reduce the likelihood of litigation caused by a misunderstanding or an error in the bid documents.

Receipt of the bids

This is a fairly straightforward process, handled in most cases by the purchasing agent. The rules for bid openings are clearly articulated in N.J.S.A. 40A:11-1 and are not subject to variation.



Negotiating contracts with markets

Recycling collection contracts must be put out to public bid. To sell the recyclables you collect, however, you can choose to go through the bid process, or you can negotiate directly with buyers.

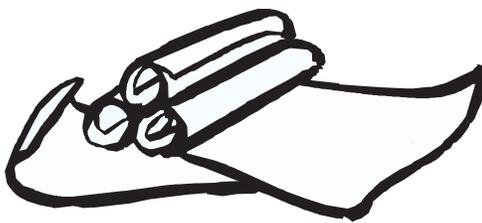
Regardless of the route you follow, you need to clearly define the services you require of your buyers and agree on those terms in your contract. This is true even if you operate solely on a verbal agreement rather than a written contract. A verbal agreement may be considered an oral contract, which is defined by Barron's Law Dictionary as "...one which is not in writing or which is not signed by the parties....it is a real existing contract which lacks only the formal requirement of a memorandum (signed by the party to be charged)."

The terms of your contract should include safeguards against poor performance by your market, such as failure to:

- pick up materials when promised
- provide trucking equipment as promised
- pay as promised

However, because this is a negotiated process, be prepared for the market to insist on safeguards as well, such as protection against:

- material that does not meet specifications
- damage caused to their equipment
- delivery of promised material
- misrepresentation of what is being marketed



A good marketing agreement requires front-end research.

1. Start with the goals of your marketing program because your aims often dictate your negotiation strategy. For example, security may be your priority. You want a reliable buyer willing to move your materials in even the worst markets. Or revenue may be your priority, so price rather than stability drives your decisions.
2. Determine both the quantity and the quality of each type of material you're marketing. Quality is defined by market specifications for each type of material, so it's critical to know your specifications.
3. Decide what services you require of buyers. Do they need to provide transportation, storage, processing, equipment, promotional materials, training, reports or credit? The services you require may dictate whether you will sell directly to an end user or to an intermediary, such as a broker or processor. Intermediaries usually provide a wider range of services than end users.
4. Research your local markets. How do local market conditions compare to national averages? What buyers are available? How long have they been in the market and how reliable have they been in different kinds of markets? What are local trucking rates? Stay current on market indicators, which are discussed in Chapter 4. How will your price change as market indicators change?

After the preliminary research has been completed, it's time to negotiate with potential market outlets for each of your materials. Then those terms must be written clearly into the contract. The contract should also spell out payment terms in advance. How, where and by whom will materials be weighed? Will you use tare or gross weights? When will you expect payment? If cash flow is a priority, you may include a bonus (for example a 1% discount if payment is received within 15 days) for prompt payment.

One of the most important elements of any agreement is not the words themselves, but that they are honored with ethical behavior, Lefke advises. That may mean refusing a higher price if you have already promised to deliver your material to another buyer. Breaking agreements hurts your operation, even if no one ever takes legal action against you. Your reputation as a reliable business partner may be irreparably damaged. The result: you may have trouble finding buyers when you need them most.

One way to ensure both parties retain a clear understanding of their agreement is to be absolutely clear about the words used in the contract. Or as Joseph Maraziti, Jr. says, "The contract is only as good as its words. The language is the key."



Conclusion: Recycling your way to sustainability

This manual combines and condenses information from economics, accounting, finance, law and marketing. It focuses almost exclusively on the financial aspects of recycling rather than the environmental ones. Yet, New Jersey's state recycling policy was built on and is sustained by the premise that recycling generates economic and environmental benefits that are not covered by the financial analysis discussed in this manual, including:

- conservation of virgin resources
- job creation and economic development
- extending the life of landfills and incinerators, which are notoriously expensive and difficult to site in New Jersey
- increased self-sufficiency in solid waste management
- energy conservation
- greenhouse gas reductions
- increased exports that improve state and federal trade balances

These benefits are real and quantifiable, so why aren't they factored into the financial analysis in this manual? Most recycling coordinators acting alone have little control over those issues. In many cases, they may be determined by worldwide market forces (or natural forces in the case of greenhouse gasses) that literally no one can control alone. In other cases, they may be determined by state and federal policies that are beyond the authority of recycling program managers.

Cast your dollar vote for recycling

Even if you cannot control these forces, you can help push them in the right direction. For example, you can help increase demand for recycled-content products by promoting "Buy Recycled" campaigns to residents and businesses and adopting them for your own purchasing guidelines. Given the law of supply and demand, your campaigning alone may be too small to affect the markets for paper, just as your single vote may not affect the outcome of a national election. However, the collective force of millions of people individually casting their "dollar votes" in favor of products with recycled content ultimately may increase



the prices coordinators receive for the recyclables they collect. You may not be able to dictate the outcome, but you can become part of the solution by understanding the importance of your dollar vote.

The recycling coordinator as environmental technologist

In the meantime, you can control, or at least recommend how to control, the costs of your recycling programs. Reducing those costs is guaranteed to increase the cost-benefit scenario for recycling in their communities, regardless of what happens to other factors in the equation. That puts coordinators in a powerful position. Using tools of financial analysis discussed in this manual, you have the power to design sustainable recycling programs that provide short and long-term economic and environmental benefits.

The U.S. Office of Science and Technology defines an “environmental technology” as “a technology that advances sustainable development by reducing risk, enhancing cost-effectiveness, improving process efficiency and creating products that are environmentally beneficial or benign. The word ‘technology’ is intended to include hardware, software, systems and services.”¹ That definition makes New Jersey’s recycling coordinators “environmental technologists” who are reducing risks, improving efficiency and cost-effectiveness, and helping create new environmentally beneficial products.

That’s a worthy goal. The recycling programs that reach it will be designed and operated by recycling professionals with a commitment to recycling and an understanding of financial analysis. Take control of your program by mastering these tools and making the numbers work for you.

